



**U.S. Department of Justice**

*United States Attorney  
Eastern District of New York*

SK/JMH  
F. #2013R00948

*610 Federal Plaza  
Central Islip, New York 11722*

May 19, 2021

By Hand and ECF

The Honorable Joseph F. Bianco  
Visiting United States Circuit Judge  
Eastern District of New York  
100 Federal Plaza  
Central Islip, New York 11722

Re: United States v. Tommy Constantine  
Criminal Docket No. 13-607 (JFB)

Dear Judge Bianco:

The government respectfully submits this letter in response to the Court's order of May 11, 2021, concerning certain electronic devices seized from the above-referenced defendant's co-defendant Phillip A. Kenner ("Kenner"). See Minute Entry (May 12, 2021) (summarizing order as a result of status conference held on May 11, 2021 ("the May 11 Conference")).

At the May 11 Conference, in short, the Court directed the government to update the parties and the Court concerning the status of specific electronic devices seized from Kenner, and any forensic copies or electronic images thereof. As the Court will recall, Kenner's efforts to have various electronic devices returned to him, including but not limited to the devices at issue at the May 11 Conference, have been the subject of prior litigation in this matter, including most recently in 2019. See generally ECF No. 670 (Kenner's motion dated June 17, 2019, seeking return of property); see also ECF No. 329 (Court's opinion denying Kenner's motion to suppress evidence found on these same devices, summarizing the circumstances of their seizure).

In its opposition to Kenner's motion for return of property dated July 23, 2019, the government confirmed that it had seized inter alia, a MacBook Pro laptop bearing serial number W8906K17LAX ("the MacBook"), and an Apple iPhone bearing serial number 327423VDVR0 ("the iPhone," and, collectively with the MacBook, "the Devices"). The Devices had been seized from Kenner's residence on November 13, 2013. See ECF No. 678 at 2-3. The government observed in that letter that it wished to retain the Devices as evidence pending a final disposition of this case. Id.; see also ECF No. 710 (government's

letter dated Sept. 9, 2019, updating the Court on the same devices following a status conference held Sept. 5, 2019).<sup>1</sup>

Following the May 11 Conference, the government asked the custodian of the Devices—the Federal Bureau of Investigation (“the FBI”)—to confirm that both Devices remained in FBI custody. The FBI has since visually confirmed that both Devices remain in FBI custody.

The government also asked the FBI to confirm that electronic files generated from the Devices when they were originally searched remained intact. As to the MacBook, the FBI has confirmed that a forensic image was generated on or about December 4, 2013. That forensic image remains intact and in FBI custody. As to the iPhone, the FBI has confirmed that an extraction report was generated on or about December 24, 2013. That extraction report remains intact and in FBI custody.

Respectfully submitted,

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CJA Counsel of Record (By ECF)  
Appellate Counsel of Record (By Email)  
Phillip A. Kenner, pro se (By Mail)

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<sup>1</sup> It is the recollection of the undersigned that, as relevant to the Devices, the Court denied Kenner’s motion (ECF No. 670) in a verbal order from the bench.